IN THE

Supreme Court of the United States

October Term 1972
No. 72-5735

ANDREW STRANGEL,

Petitioner,

vs.

CITY OF ANAHEIM, *et al.*, etc.,

Respondent.

Opposition to Petition for Writ of Certiorari.

I.

This case was originally tried to a jury in the Superior Court of the State of California for the County of Orange, The Honorable James F. Judge, presiding. Upon motion of the defendant, City of Anaheim, the Court directed a verdict in favor of said defendant. Plaintiff in the trial court then appealed the judgment in favor of the defendant. This appeal was to the Court of Appeal for the Fourth District, Second Division, State of California.

The Court of Appeal affirmed the judgment of the trial court. The Appellate Court's decision was based on the fact that the issue that was presented for determination by the Appellate Court was one that required examination of the oral proceedings in the trial court, but the Appellant had not included a Reporter's

Transcript in the record on appeal. Nor was a Settled Statement available to the Appellate Court from which it might determine the issues raised by the plaintiff. Consequently, under the holdings in *Kompf v. Morrison*, 73 Cal. App. 2d 284, 286 and *Block v. Laboratory Procedures, Inc.*, 8 Cal. App. 3d 1042, 1045, the inadquacy of the record on appeal raised the presumption that the evidence presented at trial was ample to sustain findings in the trial court. Hearing was then denied in the Supreme Court of the State of California, whereupon plaintiff filed this Petition for Writ of Certiorari to this court.

II.

U.S. Supreme Court Rule 38, 28 U.S.C.A. .... provides as follows:

> "1. A petition for review on Writ of Certiorari of a decision of a state court of last resort . . . shall be accompanied by a certified transcript of the record in the case, including the proceedings in the court to which the writ is asked to be directed . . ."
>
> "A review on Writ of Certiorari is not a matter of right, but of sound judicial discretion, and will be granted only where there are special and important reasons therefor. The following . . . indicate the character of reasons which will be considered:
>
> "(a) Where a state court has decided a Federal question of substance not theretofore determined by this court, or has decided it in a way probably not in accord with applicable decisions of this court. . . ."

III.

It is believed that the present Petition for Writ of Certiorari should be denied. Petitioner has not accompanied his Petition by a certified transcript of the record in the case. All that is presented from the trial court proceedings is a copy of the partial Reporter's Transcript which contains none of the oral testimony ellicited during the trial. This is the same defect that was present when the Petitioner attempted to appeal the decision of the trial court to the California Court of Appeal. For this reason alone, the Petition for Writ of Certiorari should be denied.

The Petition for Writ of Certiorari fails to show either that there was a denial of the plaintiff's rights at the trial level, or that there was error during the trial which required reversal on appeal. Petitioner did not comply with procedural requirements upon appeal in the state courts, and the state court was therefore required to affirm the judgment of the trial court. Petitioner was asking the State Appellate Court to find the Trial Court in error, without presenting to the Appellate Court the record from which it could determine this issue. Petitioner is now asking this Court to do that which the State Court could not do, that is, decide an issue without being given the facts upon which to base such a decision. For this and the previous reasons indicated, it is respectfully submitted that this Petition for Writ of Certiorari should be denied.

Dated: December 15, 1972.

PIERCE J. POWERS,
Attorneys for Respondent,
City of Anaheim.

RUSTON and NANCE,
Of Counsel.

IN THE
SUPREME COURT OF THE UNITED STATES

No. 72-5735

JUERGEN STENGEL,

Petitioner.

vs.

CITY OF ANAHEIM, et al., etc.

Respondent.

PETITION FOR REHEARING OF ORDER ON PETITION FOR WRIT OF CERTIORARI

I

In Massey v. United States, 291 U.S. 608, the Court stated on page 610:

> "No final judgment was rendered herein against the petitioner prior to the ratification of the Twenty-First Amendment".

II

A similarly intervening circumstance of substantial effect, controlling the judicial system, process and procedure as well as justifying its existence is believed by petitioner to exist in this case. Petitioner believes a Court to be duty-bound to either acquit or convict a properly arraigned defendant of the charges against him. Such was not the case here as set forth in the Opinion of the Court of Appeal on page 1:

"i/ Lawrence C. Feemster was served as DOE I but was not included in the verdict of the jury. No explanation appears from the record before us".

Dated: January 28, 1973

Respectfully submitted,
JUERGEN STENGEL,
Attorney for Petitioner.

Certificate

Counsel for petitioner hereby certifies that the above Petition for Rehearing of Order on Petition for Writ of Certiorari is presented in good faith and not for delay.

Counsel for petitioner further certifies that the above Petition is restricted to the grounds above specified.

Executed on January 28, 1973, at Westminster, California.

JUERGEN STENGEL,
Counsel for Petitioner.